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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/526,037	03/15/2000	Kent Allan Franklin	KCC-2044	9629
35844	7590	04/06/2005	EXAMINER	
PAULEY PETERSEN & ERICKSON 2800 WEST HIGGINS ROAD HOFFMAN ESTATES, IL 60195			DEXTER, CLARK F	
			ART UNIT	PAPER NUMBER
			3724	

DATE MAILED: 04/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/526,037

Applicant(s)

FRANKLIN ET AL.

Examiner

Clark F. Dexter

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 December 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) 2-7, 9, 17-22 and 27-39 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1, 8 and 10-14 is/are allowed.
- 6) ☒ Claim(s) 15 and 16 is/are rejected.
- 7) ☒ Claim(s) 23-26 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The amendment filed on December 27, 2004 has been entered.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smithe et al., pn 5,480,085.

Smithe discloses a method with almost every step of the claimed invention including feeding a continuous web of material from a feed roll (e.g., 18) to a cut-off

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module (e.g., 22); measuring tension in the web (e.g., at 102); using the cut-off module to cut a piece of the material from the continuous web; and adjusting the feed roll speed to adjust the length. Smithe lacks (a) the steps of measuring an actual length of the piece of material and comparing the actual length to the target length and (b) the web being elastic. However, the Examiner takes Official notice that such steps, particularly those performed on an elastic web, are old and well known in the art. As one example, such steps are performed on webs when synchronizing a machine for quality control purposes; that is, the actual length, at some point in time, must be measured, either by hand or automatically, to ensure that the actual length corresponds to the target length. If the lengths do not correspond, the feed rate of the feed rolls would be adjusted as taught by Smithe (e.g., see column 7, lines 62-64). Shirasu, pn 4,635,511 provides one example of a web cutting device that includes the steps of measuring an actual length of the workpiece and comparing the actual length to the target length. Further, Radar, pn 4,543,863 provides one example of a web cutting device that includes the steps of matching a cut length of an elastic web to a target length thereof and making corrections on the fly by adjusting either the cutter speed or the web speed (e.g., see the abstract; and column 6, lines 45-48). Therefore, it would have been obvious to one having ordinary skill in the art to provide the steps of measuring an actual length of an elastic web material and comparing the actual length to a target length on the apparatus of Smithe for the well known benefits including those described above.

Allowable Subject Matter

4. Claims 1, 8 and 10-14 are allowable over the prior art of record.
5. Claims 23-26 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

6. Applicant's arguments with respect to claims 15, 16 and 23-26 have been considered but are moot in view of the new ground(s) of rejection. It is noted however that, contrary to applicant's arguments, the Examiner respectfully maintains that the applied prior art meets the limitations of claim 16 in that a tension, which can be referred to as a minimum tension, is maintained immediately preceding the feed roll.

Rejoinder

7. Claims that depend from an allowable independent claim will be rejoined at the time of allowance of the application.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Clark F. Dexter whose telephone number is (571)272-4505. The examiner can be reached Monday, Tuesday, Thursday and Friday during normal business hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan N. Shoap can be reached on (571)272-4514. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Clark F. Dexter', with a stylized flourish at the end.

Clark F. Dexter
Primary Examiner
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cfid
April 4, 2005